IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 710 OF 2002.

Dagadu Raghu Marne. ... Appellant.
Versus.
Chandrakant Govind Marne. ... Respondent.

Shri V.G.Mujumdar for the Appellant.

CORAM : ABHAY S.OKA, J.

DATED : 28th April, 2006.

P.C.:

1. Heard Shri Mujumdar for the Appellant. The Appeal is by the original Plaintiff who succeeded in the trial Court. The decree has been set aside by the Appellate Court in the year 2000. The case of the Appellant/Plaintiff is that the sale deed dated 4th February 1987 was got executed from him by the Defendant/Respondent by practicing fraud.

2. Shri Mujumdar submitted that the plea of fraud and misrepresentation was established before the trial Court. He placed reliance on the decision of the Privy Council reported in AIR 1937 P.C. page 14. He submitted that the Judgment of the Appellate Court is perverse. He submitted that the Appellant had proved his exclusive possession.

3. I have considered the submissions. The Appellate Court observed that in the pleading the Appellant has alleged that his own brother Babu came to

his house and he acted in collusion with the Respondent/Defendant and played a fraud upon him. The Appellate Court observed that the Appellant's brother was neither impleaded as a party nor was he examined by the Appellant. The Appellate Court after considering the oral and documentary evidence on record has come to the conclusion that the fraud is not established. The Appellate Court has also come to the conclusion that the Appellant has failed to prove that he is in exclusive possession. The finding of the Appellate Court is based on appreciation of oral and documentary evidence. No substantial question of law arises. The Second Appeal is dismissed.

Judge.